

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

DAVID A. STEBBINS

PLAINTIFF

v.

NO. 4:16-CV-545-JM

**STATE OF ARKANSAS, ARKANSAS
REHABILITATION SERVICES, AND
AMY JONES**

DEFENDANT

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR CONTEMPT**

COME NOW Defendants the State of Arkansas, Arkansas Rehabilitation Services, and Amy Jones, by and through their attorneys, Attorney General Leslie Rutledge and Assistant Attorney General Amber R. Schubert, and for their Response to the Motion for Contempt filed by Plaintiff, state as follows:

1. Plaintiff David Stebbins filed his Complaint in this action alleging Defendants Amy Jones and Arkansas Rehabilitation Services ("ARS") violated his civil rights pursuant to 42 U.S.C. § 1983 and his rights under Title II of the Americans With Disabilities Act (ADA), and seeks a total of \$744,537.50 in damages. Plaintiff also sued the State of Arkansas, but makes no allegations against the State of Arkansas in his Complaint.

2. On November 10, 2016, Defendants filed a Motion to Dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted, and because Plaintiff's claims are barred Eleventh Amendment sovereign immunity. On December 6, 2016, Plaintiff filed a response to Defendants' Motion to Dismiss and that motion is now pending before the Court.

3. Despite the pending Motion to Dismiss, Plaintiff has repeatedly asserted that the Court has “already decided in his favor on the issue of sovereign immunity” and “plans on denying the Defendant’s [sic] Motion to Dismiss” and attempted to force Defendants to prematurely litigate the merits of his claims. See Docket Entries 25 and 30.

4. In addition to filing a premature motion for summary judgment, Plaintiff has also prematurely served discovery on Defendants, filed a motion for contempt, and twice moved for sanctions against Defendants for simply defending themselves against Plaintiff’s lawsuit.

5. Plaintiff’s Motion for Contempt is based on the fact that Defendants have not participated in a 26(f) conference.

6. First, the deadline for completing the 26(f) conference has not yet passed. That alone is reason to deny Plaintiff’s motion for contempt.

7. Second, as Defendants clearly told Plaintiff in an email dated December 30, 2016, it is premature to schedule a 26(f) conference until the Court has ruled on the pending motion to dismiss, and Defendants will file a motion to stay the current 26(f) deadlines based on the pending motion to dismiss.

8. As Plaintiff stated in his Motion for Contempt, because of the pending motion to dismiss, Defendants maintain that “they are not required to file an Answer – nor do anything that usually comes after the Answer – until that motion is ruled on.” D.E. 32, ¶5. That exactly summarizes Defendants position.

9. The recent flurry of motions filed by Plaintiff are based on his unsupported conclusory assertion that this Court has already ruled in his favor on the pending motion to dismiss. That is false, and all of Plaintiff’s motions based on that premise, including the Motion for Contempt, should be denied.

10. A protective order should be entered preventing Plaintiff from serving any further discovery on Defendants, or filing any further motions until this Court has had an opportunity to rule on the pending Motion to Dismiss.

WHEREFORE, Defendants the State of Arkansas, Arkansas Rehabilitation Services, and Amy Jones, pray that Plaintiff's Motion for Contempt be denied, that their Motion to Dismiss be granted, and for all other just and proper relief to which they are entitled.

Respectfully submitted,

Leslie Rutledge
Attorney General

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Amber R. Schubert, Assistant Attorney General, do hereby certify that on January 10, 2017, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system.

I, Amber R. Schubert, hereby certify that on January 10, 2017, I mailed the document by U.S. Postal Service to the following non CM/ECF participant:

Mr. David Stebbins
123 W. Ridge St., Apt. D
Harrison, Arkansas 72601

/s/ Amber R. Schubert